

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**August 4, 2010**

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Sioeli Uluakiola, Russell Moore, Scott Spendlove, Mark Hales, Sandy Naegle and Necia Christensen

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Claire Gillmor

**AUDIENCE:**

Approximately three (3) people were in the audience.

**B-3-2010**  
**Brace Variance**  
**3692 South Chula Drive**  
**R-1-8 Zone**

**REQUEST:**

Mr. Wayne Brace is requesting consideration for a variance from Section **7-6-305(3)** of the West Valley City Code. This section requires that the minimum rear yard setback in the R-1-8 zone be 15 feet for homes constructed prior to July 1986. The applicant is requesting a variance of 3 feet in preparation to construct an addition to the existing dwelling.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as lot 19 of the Copper Hill Heights No. 12 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in June 1979. According to County records, the existing single family dwelling was constructed in 1979. The property is currently zoned R-1-8.
- ☐ Recently, the applicant approached the City about the possibility of doing an addition to the existing single family dwelling. The purpose for this addition would be to provide enclosed parking for a recreational vehicle. The addition would adjoin the existing two car garage on the north side of the dwelling.
- ☐ Staff explained that the side setback adjacent to the north property line would not be a problem. However, the proposed rear setback of 12 feet would be three feet shy of meeting the ordinance. Generally, the rear setback in an R-1-8 zone is 20 feet. However, for homes constructed prior to July 1986, the rear setback is allowed at 15 feet.
- ☐ Mr. Brace explained that due to the shallow depth of this lot along the north side he could not meet the 15-foot requirement. Staff reviewed the recorded plat and noted that the distance from front of lot to back is 73.56 feet. Staff explained that the shallow depth at this point on the property could be considered a hardship and further explained the variance criteria. After evaluating the options, Mr. Brace decided to pursue a variance.
- ☐ The property in question is unique due to the curvature of Chula Drive. The south property line runs nearly 44 feet longer than the north. The applicant has visited with adjacent neighbors and has submitted a building petition. Staff has included this petition along with the applicants and responses to the variance criteria.

- An existing sewer and irrigation easement are located along the north side of the property. This easement was recorded as part of the plat in 1979. Although these may no longer be in use, or may have been abandoned, the applicant would need to coordinate this issue if the Board approves the variance.

**ORDINANCE SUMMARY:**

Section 7-6-305(3) of the West Valley City Land Use Development and Management Act requires the rear yard setback in the R-1-8 zone to be 15 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

Mr. Moore remarked we may want to take a step back and see what others in the same zoning district have.

**Applicant:**

**Wayne Brace  
3692 S. Chula Dr.**

Mr. Brace stated he is requesting a 3 foot variance on the back side of his property to build a garage for his RV. The addition would adjoin the existing two car garage on the north side of the home. The addition would be 12 feet from the property line in back and about 4 feet on the north side of the property. He explained that due to the shallow depth of the lot along the north side of his home he could not meet the 15 foot requirement and noted that he has an unusual lot configuration as well.

Ms. Naegle asked the applicant to point out to the Board which lots he is comparing his property to (with similar garages). Mr. Brace responded the narrow one across the street and several others in the neighborhood.

Mr. Hales inquired what use would you be denied that granting the variance will alleviate? Mr. Brace responded that currently I have everything in my storage unit in Tooele and it is quite a long drive to access my storage unit. I need to be able to utilize the garage on my property to store my RV's, etc. Mr. Hales reaffirmed you are stating that currently you do not have a storage area for your RV, etc. So you believe you are denied the right to have similar RV storage that you want. However, other lots in the neighborhood have a different configuration than you making it very difficult for you to have RV storage on your property. Mr. Brace replied yes.

Mrs. Christensen inquired about easements for irrigation and sewer.

Mr. Brace replied they no longer have the sewer and it would not affect the irrigation.

Mrs. Christensen questioned is there anyone present that is in favor or opposed to this application? (There was no response). Mr. Brace would you like to summarize?

Mr. Brace reviewed the variance criteria:

**CRITERIA:**

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Due to the alignment of Chula Drive, a large portion along the north side of our lot is reduced in depth. This is peculiar to our lot in this subdivision and not others. The shallow depth along this side of our lot would not allow me to add the R.V. garage.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

The special circumstance is that the north side of our lot is 40 feet less than the south side of the lot. As I look at the subdivision plat, our lot is the only one with this much taken out by the street. Lot 1 is similar, but it has a depth of 87 feet.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Allowing the variance will provide me the opportunity to house my R.V. out of sight which will help me keep my property looking orderly and maintain a view that my neighbors and WVC would appreciate. There are many others in my neighborhood that have built attached or detached structures for this purpose.

4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.**

The variance will not affect the general plan. I am not asking for relief on the side, only the back which cannot be seen from the street. The construction of the addition will blend in with the home and will have a building permit. The enclosures will allow me to store my R.V. and other miscellaneous items out of the public view, thus improving the quality and look of our neighborhood.

5. **The spirit of the zoning ordinance is observed and substantial justice done.**

All requirements and specifications required by the City will be allowed and met by a licensed contractor and myself.

**Discussion:**

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

**The Board of Adjustment agreed that the applicant has met the first criteria and that the hardship is the unusual configuration of the lot and the unique shape of the lot.**

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

**Mr. Moore stated that the unreasonable hardship and the special circumstance attached to the property is the way the home sits on the lot**

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

**Mr. Spendlove stated he does not believe the applicant has met the second criteria. The Board cannot include self imposed or financial hardships. Is an RV storage or addition to a carport a substantial property right? I do not believe it is. Mr. Moore responded that he disagrees. The City Council changed the requirements for two car garages and indicated they are in favor of parking vehicles inside the garage. I believe this is an extension of this concept. Mrs. Christensen said that she also believes that the resident should have the ability to use his property for storage. Mr. Hales replied I disagree. Just because a property owner chooses to purchase an RV or something larger than what fits on their property does not make it a substantial property right.**

**Mr. Moore questioned are there other properties in this zoning district that have an RV garage and are similar to this request? Mr. Hales replied yes. Mrs. Christensen inquired are you stating "lots that are in this same zoning district?" Mr. Moore responded in the same zoning district and they must also adhere to the rules that are permitted in that zone. The main question is "do others in this zoning district have RV storage similar to the applicant?" Do they have an odd lot configuration like this property owner has...and that same right to allow them to have a garage for the RV storage? Mr. Spendlove questioned, "how large of an RV is a substantial property right...and how does this correspond with different size RV's or RV garages?" Mr. Moore responded the lot configuration becomes the guiding light to approve this variance request. By denying the applicant and allowing that property right to others in this zoning district is where the property right is being denied.**

**Claire Gillmore provided clarification on the definition of the enjoyment of a "substantial property right". She mentioned that Mr. Hale's discussion was alluding to this. The first analysis is "are we talking about a substantial property**

right?” During the study discussion, we reviewed that a “substantial property right” was because of a slope problem or a very big issue with the property. This is a vague standard. The issue the Board needs to address is having an RV parking space a substantial property right. Then do other similar lots enjoy that same property right? The City’s standpoint is no. The Building Department is enforcing on illegal patio covers, sheds, accessory buildings, etc.

Mr. Hales questioned is it a substantial property right to have a garage larger than other garages due to the fact that they have a larger RV? Mrs. Christensen pointed out it is clearly stated others in the same zoning district. Everyone in the zoning district has this property right if it fits. The applicant has a property hardship due to the odd configuration of his lot. I think that most residents in an R-1-8 zone can fit an RV garage on their property without requesting a variance. I believe the applicant meets the criteria for a substantial property right.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Mr. Hales stated I agree the applicant meets the fourth criteria. Ms. Naegle indicated that the Board has received signatures from several of the applicant’s neighbors stating that they are in favor of the variance request. Mr. Uluakiola noted that the Board also received letters that were submitted during last month’s public meeting. The letters were from neighbors who indicated that they are in favor of Mr. Brace’s variance request. Mrs. Christensen acknowledged that the fourth criteria has been met. Mr. Moore indicated that with each variance application neighbors within 300 feet of the property are notified of the public hearing.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mrs. Christensen stated I believe that this criteria has been met and that substantial justice would be done. She questioned Claire about her opinion in regards to “substantial justice” in regards to this particular property. Mrs. Gillmor responded I believe this would meet the criteria for substantial justice. The property would be beautified with the RV being stored to keep the property aesthetically pleasing by moving the RV out of the driveway and into a garage. Mr. Spendlove said the big picture is to help prevent clutter. I don’t know if this meets the term “substantial justice” for the entire property and how this corresponds with the intent of the ordinance. “Substantial justice” is the idea that a property owner is being deprived of a property right and that the Board is remedying that right.

Mr. Lehman explained the hardship issue the Board should focus on is whether or not there is something unique and is the applicant being denied a property right? Mrs. Christensen acknowledged the hardship is based on the shape of the applicant’s property. The lot appears smaller than 8000 square feet because of the

**unusual configuration and the difference between the north and south property lines make it a reasonable hardship.**

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

### **Motion**

Mr. Uluakiola stated I move to approve application, B-3-2010, requesting a variance of 3 feet to reduce the minimum rear yard setback from the required 15 feet to 12 feet in order to construct an addition to the existing dwelling.

Mr. Moore seconded the motion.

A roll call was taken.

Mr. Uluakiola	Yes
Mr. Moore	Yes
Mr. Spendlove	No
Ms. Naegle	No
Chairperson Christensen	Yes

**Motion carries – majority vote**

**Approved- B-3-2010– Majority**

### **B-5-2010**

**Rafael Hurtado – Variance Request  
6901 West 3100 South**

### **REQUEST:**

Rafael Hurtado has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Land Use Development and Management Act. This section requires that the front yard setback in the 'R-1-10' zone be a minimum of 30 feet. However, for this lot in the Hunter Village PUD Phase 16, the minimum front yard setback is 25 feet. The applicant is requesting a variance of 4.5 feet for a basement walkout entrance.

### **BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as Parcel Number 14-27-327-017. The property is lot 1611 in Hunter Village PUD Phase 16. The home was built in 2005 under the regulations approved for the Hunter Village PUD.
- ☐ The applicant received a notice of violation from the City regarding the location of the proposed basement walkout on the property. Upon contacting the City regarding setback and building regulations, staff informed the applicant that the basement walkout must meet the minimum setbacks for the house, in this case, 25' in the front as specifically approved for this lot in Hunter Village. Neighboring homes were approved with a minimum front setback of 22', but adjacent homes are required to have varying setbacks per the development agreement as well as City Ordinances. The applicant has enough space to build a basement walkout entry in the rear of the home but would rather have the walkout in the front. After discussing these concerns and outlining the variance procedure, the applicant determined that they would request a variance.
- ☐ Although neighboring homes have a minimum setback of 22', the applicant would still need a variance if given that setback. In addition, homes with the same zoning that are not in Hunter Village are required to maintain a 30' front setback.
- ☐ The City ordinances allow a maximum 4' exception for stairs to encroach into side and rear yard setbacks, but not front setbacks.
- ☐ The property in question is 0.25 acres. The parcel has a frontage of 80 feet along 3100 South and a depth of 126 feet on the shorter east side of the lot. Neighboring properties have similar frontages and lot sizes.
- ☐ All zoning regulations shall be met and a building permit will be obtained if this variance is approved. The applicant has submitted the criteria to the Board addressing the variance criteria in preparation of the hearing and is enclosed.

Hannah Thiel presented the application to the Board and indicated that she had received several calls regarding this application. Some of the concerns included:

- A resident who lives on the street behind the applicant expressed concerns regarding neighborhood property values and remarked that by allowing the basement walkout entrance it seems more like a duplex than a single family home.
- A neighbor who lives adjacent to the applicant stated that he was opposed to the variance request. Concern was expressed that it would be more like a duplex.
- Concerns about intent to rent the basement.
- Concerns that parking issues would increase with another unit.
- Property values would be lowered if the aesthetics changed.



Mrs. Christensen questioned “can we consider property values of neighbors?” Mrs. Gillmor responded “you can consider his concern, but it comes back to the criteria and if it is contrary to public interest. I believe it is appropriate to consider all comments.” Mr. Moore inquired if there was a configuration that would allow constructing the walkout that would meet the setbacks. Mrs. Thiel responded that there is not any configuration that would comply and be in front, but would in the back. Mr. Spendlove questioned “since this is a pud...does the setback requirements change?” Mrs. Thiel replied the whole neighborhood was approved this way. A PUD has a varied setback than the typical homes in an R-1-10 zone.

**Applicant:**  
**Rafael Hurtado**  
**6901 West 3100 S**

Mr. Hurtado stated that he had built stairs that come out of the basement. He explained that the only location this could have been done was in front of the house on the west side of the main door. He said that he did not know he needed to get a permit since the stairs were not hazardous to the public. The stairs are built 20.6 feet away from the public sidewalk, but could make them meet the code if he needed to. Mr. Hurtado noted that he felt that the stairs were necessary to come in or out of the basement in case of emergency.

Mrs. Christensen inquired “in your explanation, you stated you can’t put the stairs in the back?” Mr. Hurtado responded, “there is not enough space.”

Mr. Hurtado reviewed the variance criteria.

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**
  - a) The variance is located on my property.
  - b) The basement walkout stairs were added to provide necessary outside access to the basement. This access could not be placed in the rear yard because the entrance would not fit with the basement floor plan.
- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

The home was built under the Hunter Village regulations and has a greater setback than neighbors on both sides. A lesser setback would more readily allow the walkout stairs for which I am requesting a variance.

- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

The basement access will allow a necessary fire escape from the basement. Others have adequate access from the main level living space for safety reasons and I am requesting adequate access from my basement living space.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

I have no plans to use the basement for anything other than living space for my family. We have no intentions of renting out the basement. The general plan indicated low density residential, and my single family home fits within the general plan use guidelines.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

The spirit of the zoning ordinance is observed because I am simply requesting an access to my single family home. The City ordinances allow an exception for stairs to encroach into the side and rear setbacks up to 4' and I am requesting the same treatment in my front setback.

**Discussion:**

Mr. Uluakiola said "I do not agree the applicant meets with criteria 5." Mr. Hales indicated this is not substantial justice as it is a long term commitment and it doesn't meet the general plan. Mrs. Christensen noted all of his neighbors do not have basements with access from their basements. Mr. Hale remarked "how do stairs provide better safety access to escape, if there is a fire?" Mr. Moore commented "I looked at many of the homes in the subdivision and none of them have a front basement entry." Mr. Hales expressed it is not a substantial right to have an access to the front of your house. Mrs. Christensen stated, "I understand the reasons why the applicant may be requesting a variance to do this. He may wish to have his married children come and live with him when they are older or it may be his intent at some point to have family live with him. I do not believe this is a substantial property right possessed by others in same zoning district." Mr. Moore agreed. Mrs. Christensen stated he does not meet the variance criteria and we have to protect the rights of the neighbors. Mr. Uluakiola noted that neighbors have complained.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

**Motion**

Mr. Moore stated "I move we deny application, B-5-2010, Rafael Hurtado, requesting a variance of 4.5 feet to reduce the minimum front yard setback requirement from 25 feet to 20.5 feet as it does not meet the variance criteria."

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola	Yes
Mr. Moore	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Chairperson Christensen	Yes

**Motion carries –Unanimous vote**

**Denied - B-5-2010 – Unanimous**

**OTHER**

The minutes from **March 3, 2010** were **approved**.

There being no further business the meeting adjourned at 7:40 p.m.

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Karon Jensen, Administrative Assistant